

AMENDED IN SENATE JUNE 12, 2014

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2145

Introduced by Assembly Member Bradford

February 20, 2014

An act to amend Section 366.2 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2145, as amended, Bradford. Electricity: community choice aggregation.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act authorizes a community choice aggregator, as defined, to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the commission and requires that the plan include disclosures of certain information and describe other matter. The act requires the community choice aggregator to provide each customer an opportunity to opt out of his or her community's aggregation program. The act provides that customer participation in the community choice aggregation program does not require a positive written declaration for participation, but each customer shall be informed of his or her right to opt out of the program. The act provides that if no negative declaration is made by the customer regarding participation, the customer shall be served by the community choice aggregation program. The act requires an electrical corporation

to cooperate fully with any community choice aggregator that investigates, pursues, or implements community choice aggregation programs, including providing appropriate billing and electrical load data. The act requires an electrical corporation, when requested by, and at the expense of, a community choice aggregator, to install, maintain, and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries. The act requires a community choice aggregator to register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

This bill would instead provide that each customer be given an opportunity to opt in to his or her community's aggregation program. The bill would require a positive declaration from a customer for participation in the community choice aggregation program and that each customer be informed of his or her right to opt in to the program. The bill would provide that a customer shall be served by the community choice aggregation program if an affirmative declaration is made. The bill would require solicitations of customers by a community choice aggregator contain, and communication by the community choice aggregator to the public or prospective and existing customers to be consistent with, specified information and would require the implementation plan to include the disclosure of those specified information. The bill would require that the implementation plan filed by a community choice aggregator completely describe other matter required to be disclosed under existing law. The bill would authorize the commission to require that a community choice aggregator, when registering with the commission, provide additional information to ensure compliance with basic consumer protection and other rules and other procedural matters. The bill would make other technical, nonsubstantive revisions to the community choice aggregator provisions.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the bill would impose requirements regarding communication by a community choice aggregator, a violation of which would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 366.2 of the Public Utilities Code is
2 amended to read:
3 366.2. (a) (1) Customers shall be entitled to aggregate their
4 electric loads as members of their local community with
5 community choice aggregators.
6 (2) Customers may aggregate their loads through a public
7 process with community choice aggregators, if each customer is
8 given an opportunity to opt in to his or her community's
9 aggregation program.
10 (3) If a customer does not opt in to a community choice
11 aggregator's program, or has no community choice aggregation
12 program available, that customer shall continue to be served by
13 the existing electrical corporation or its successor in interest.
14 (4) The implementation of a community choice aggregation
15 program shall not result in a shifting of costs between the customers
16 of the community choice aggregator and the bundled service
17 customers of an electrical corporation.
18 (5) A community choice aggregator shall be solely responsible
19 for all generation procurement activities on behalf of the
20 community choice aggregator's customers, except where other
21 generation procurement arrangements are expressly authorized by
22 statute.
23 (b) If a public agency seeks to serve as a community choice
24 aggregator, it shall offer the opportunity to purchase electricity to
25 all residential customers within its jurisdiction.
26 (c) (1) Notwithstanding Section 366, a community choice
27 aggregator is hereby authorized to aggregate the electrical load of
28 interested electricity consumers within its boundaries to reduce
29 transaction costs to consumers, provide consumer protection, and
30 leverage the negotiation of contracts. However, the community
31 choice aggregator may not aggregate electrical load if that load is
32 served by a local publicly owned electric utility. A community
33 choice aggregator may group retail electricity customers to solicit

1 bids, broker, and contract for electricity and energy services for
2 those customers. The community choice aggregator may enter into
3 agreements for services to facilitate the sale and purchase of
4 electricity and other related services. Those service agreements
5 may be entered into by an entity authorized to be a community
6 choice aggregator, as defined in Section 331.1.

7 (2) Under community choice aggregation, customer participation
8 shall require a positive written declaration and each customer shall
9 be informed of his or her right to opt in to the community choice
10 aggregation program. If an affirmative declaration is made by a
11 customer, that customer shall be served through the community
12 choice aggregation program. If an existing customer moves the
13 location of his or her electric service within the jurisdiction of the
14 community choice aggregator, the customer shall retain the same
15 subscriber status as prior to the move, unless the customer
16 affirmatively changes his or her subscriber status. If the customer
17 is moving from outside to inside the jurisdiction of the community
18 choice aggregator, customer participation shall require a positive
19 written declaration and the customer shall be informed of his or
20 her right to opt in to the community choice aggregation program.

21 (3) A community choice aggregator establishing electrical load
22 aggregation pursuant to this section shall develop an
23 implementation plan detailing the process and consequences of
24 aggregation. The implementation plan, and any subsequent changes
25 to it, shall be considered and adopted at a duly noticed public
26 hearing. The implementation plan shall contain all of the following:

27 (A) An organizational structure of the program, its operations,
28 and its funding.

29 (B) Ratesetting and other costs to participants.

30 (C) Provisions for full disclosure of all information specified
31 in paragraph (15) and due process in setting rates and allocating
32 costs among participants.

33 (D) The methods for entering and terminating agreements with
34 other entities.

35 (E) The rights and responsibilities of program participants,
36 including, but not limited to, consumer protection procedures,
37 credit issues, and shutoff procedures.

38 (F) Termination of the program.

39 (G) A description of the third parties that will be supplying
40 electricity under the program, including, but not limited to,

1 complete information about financial, technical, and operational
2 capabilities.

3 (4) A community choice aggregator establishing electrical load
4 aggregation shall prepare a statement of intent with the
5 implementation plan. Any community choice load aggregation
6 established pursuant to this section shall provide for the following:

7 (A) Universal access.

8 (B) Reliability.

9 (C) Equitable treatment of all classes of customers.

10 (D) Any requirements established by state law or by the
11 commission concerning aggregated service, including, but not
12 limited to, those rules adopted by the commission pursuant to
13 paragraph (3) of subdivision (b) of Section 8341 for the application
14 of the greenhouse gases emission performance standard to
15 community choice aggregators.

16 (5) In order to determine the cost-recovery mechanism to be
17 imposed on the community choice aggregator pursuant to
18 subdivisions (d), (e), and (f) that shall be paid by the customers of
19 the community choice aggregator to prevent shifting of costs, the
20 community choice aggregator shall file the implementation plan
21 with the commission, and any other information requested by the
22 commission that the commission determines is necessary to develop
23 the cost-recovery mechanism in subdivisions (d), (e), and (f).

24 (6) The commission shall notify any electrical corporation
25 serving the customers proposed for aggregation that an
26 implementation plan initiating community choice aggregation has
27 been filed, within 10 days of the filing.

28 (7) Within 90 days after the community choice aggregator
29 establishing load aggregation files its implementation plan, the
30 commission shall certify that it has received the implementation
31 plan, including any additional information necessary to determine
32 a cost-recovery mechanism. After certification of receipt of the
33 implementation plan and any additional information requested,
34 the commission shall then provide the community choice
35 aggregator with its findings regarding any cost recovery that must
36 be paid by customers of the community choice aggregator to
37 prevent a shifting of costs as provided for in subdivisions (d), (e),
38 and (f).

39 (8) No entity proposing community choice aggregation shall
40 act to furnish electricity to electricity consumers within its

1 boundaries until the commission determines the cost recovery that
2 must be paid by the customers of that proposed community choice
3 aggregation program, as provided for in subdivisions (d), (e), and
4 (f). The commission shall designate the earliest possible effective
5 date for implementation of a community choice aggregation
6 program, taking into consideration the impact on any annual
7 procurement plan of the electrical corporation that has been
8 approved by the commission.

9 (9) An electrical corporation shall cooperate fully with any
10 community choice aggregators that investigate, pursue, or
11 implement community choice aggregation programs. Cooperation
12 shall include providing the entities with appropriate billing and
13 electrical load data, including, but not limited to, electrical
14 consumption data as defined in Section 8380 and other data
15 detailing electricity needs and patterns of usage, as determined by
16 the commission, and in accordance with procedures established
17 by the commission. The commission shall exercise its authority
18 pursuant to Chapter 11 (commencing with Section 2100) to enforce
19 the requirements of this paragraph when it finds that the
20 requirements of this paragraph have been violated. Electrical
21 corporations shall continue to provide all metering, billing,
22 collection, and customer service to retail customers that participate
23 in community choice aggregation programs. Bills sent by the
24 electrical corporation to retail customers shall identify the
25 community choice aggregator as providing the electrical energy
26 component of the bill. The commission shall determine the terms
27 and conditions under which the electrical corporation provides
28 services to community choice aggregators and retail customers.

29 (10) If the commission finds that an electrical corporation or
30 community choice aggregator has violated this section, the
31 commission shall order appropriate corrective action.

32 (11) The commission shall proactively expedite the complaint
33 process for disputes regarding an electrical corporation's or
34 community choice aggregator's violation of its obligations pursuant
35 to this section in order to provide for timely resolution of
36 complaints, so that all complaints are resolved in no more than
37 180 days following the filing of a complaint. This deadline may
38 only be extended under either of the following circumstances:

39 (A) Upon agreement of all of the parties to the complaint.

1 (B) The commission makes a written determination that the
2 deadline cannot be met, including findings for the reason for this
3 determination, and issues an order extending the deadline. A single
4 order pursuant to this subparagraph shall not extend the deadline
5 for more than 60 days.

6 (12) (A) An entity authorized to be a community choice
7 aggregator, as defined in Section 331.1, that elects to implement
8 a community choice aggregation program within its jurisdiction
9 pursuant to this chapter, shall do so by ordinance. A city, county,
10 or city and county may request, by affirmative resolution of its
11 governing council or board, that another entity authorized to be a
12 community choice aggregator act as the community choice
13 aggregator on its behalf. If a city, county, or city and county, by
14 resolution, requests another authorized entity be the community
15 choice aggregator for the city, county, or city and county, that
16 authorized entity shall be responsible for adopting the ordinance
17 to implement the community choice aggregation program on behalf
18 of the city, county, or city and county.

19 (B) Two or more entities authorized to be a community choice
20 aggregator, as defined in Section 331.1, may participate as a group
21 in a community choice aggregation program pursuant to this
22 chapter, through a joint powers agency established pursuant to
23 Chapter 5 (commencing with Section 6500) of Division 7 of Title
24 1 of the Government Code, if each entity adopts an ordinance
25 pursuant to subparagraph (A). Pursuant to Section 6508.1 of the
26 Government Code, members of a joint powers agency that is a
27 community choice aggregator may specify in their joint powers
28 agreement that, unless otherwise agreed by the members of the
29 agency, the debts, liabilities, and obligations of the agency shall
30 not be the debts, liabilities, and obligations, either jointly or
31 severally, of the members of the agency. The commission shall
32 not, as a condition of registration or otherwise, require an agency's
33 members to voluntarily assume the debts, liabilities, and obligations
34 of the agency to the electrical corporation unless the commission
35 finds that the agreement by the agency's members is the only
36 reasonable means by which the agency may establish its
37 creditworthiness under the electrical corporation's tariff to pay
38 charges to the electrical corporation under the tariff.

39 (13) Following adoption of aggregation through the ordinance
40 described in paragraph (12), the program shall allow any retail

1 customer to opt in to the community choice aggregation program.
2 Delivery services shall be provided at the same rates, terms, and
3 conditions, as approved by the commission, for community choice
4 aggregation customers and customers that have entered into a direct
5 transaction where applicable, as determined by the commission.
6 Once enrolled in the aggregated entity, any ratepayer that chooses
7 to opt out within 60 days or two billing cycles of the date of
8 enrollment may do so without penalty and shall be entitled to
9 receive default service pursuant to paragraph (3) of subdivision
10 (a). Customers that return to the electrical corporation for
11 procurement services shall be subject to the same terms and
12 conditions as are applicable to other returning direct access
13 customers from the same class, as determined by the commission,
14 as authorized by the commission pursuant to this code or any other
15 provision of law, except that those customers shall be subject to
16 no more than a 12-month stay requirement with the electrical
17 corporation. Any reentry fees to be imposed after the opt-out period
18 specified in this paragraph, shall be approved by the commission
19 and shall reflect the cost of reentry. The commission shall exclude
20 any amounts previously determined and paid pursuant to
21 subdivisions (d), (e), and (f) from the cost of reentry.

22 (14) Nothing in this section shall be construed as authorizing
23 any city or any community choice retail load aggregator to restrict
24 the ability of retail electricity customers to obtain or receive service
25 from any authorized electric service provider in a manner consistent
26 with law.

27 (15) Every solicitation of customers by a community choice
28 aggregator shall contain, and communication by the community
29 choice aggregator to the public or to a prospective or existing
30 customer shall be consistent with, ~~the following information:~~
31 *electric supply rate for the customer if the customer remains with*
32 *the electrical corporation compared to the electric supply rate if*
33 *the customer chooses to be served by the community choice*
34 *aggregator. Rates shall be specific to the customer class of that*
35 *customer and shall be provided for the next five years of service.*
36 *The electrical corporation shall provide its projected electric*
37 *supply rate to the community choice aggregator.*

38 ~~(A) The electric supply rate for the customer if the customer~~
39 ~~remains with the electrical corporation compared to the electric~~
40 ~~supply rate if the customer chooses to be served by the community~~

1 choice aggregator. Rates shall be specific to the customer class of
2 that customer and shall be provided for the next five years of
3 service. The electrical corporation shall provide its projected
4 electric supply rate to the community choice aggregator.

5 (B) The annual greenhouse gas emissions rate for electricity
6 actually delivered to customers for the previous two years if the
7 community choice aggregator has been serving customers and the
8 projected annual greenhouse gas emissions rate for electricity to
9 be actually delivered in the next five years of service. The projected
10 greenhouse gas emissions rate for each year shall be calculated
11 using the regulations and protocols established by the State Air
12 Resources Board, and for previous years using the greenhouse gas
13 emissions reported pursuant to Article 2 (commencing with Section
14 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of
15 the California Code of Regulations. The greenhouse gas emissions
16 rate shall include any emissions otherwise attributable to any first
17 importer supplying electricity to the community choice aggregator,
18 whether or not the community choice aggregator is a first deliverer
19 as defined in paragraph (175) of subdivision (a) of Section 95102
20 of Title 17 of the California Code of Regulations.

21 (16) A community choice aggregator shall have an operating
22 service agreement with the electrical corporation prior to furnishing
23 electric service to consumers within its jurisdiction. The service
24 agreement shall include performance standards that govern the
25 business and operational relationship between the community
26 choice aggregator and the electrical corporation. The commission
27 shall ensure that any service agreement between the community
28 choice aggregator and the electrical corporation includes equitable
29 responsibilities and remedies for all parties. The parties may
30 negotiate specific terms of the service agreement, provided that
31 the service agreement is consistent with this chapter.

32 (17) The community choice aggregator shall register with the
33 commission, which may require additional information to ensure
34 compliance with basic consumer protection and other rules and
35 other procedural matters.

36 (18) Once the community choice aggregator's contract is signed,
37 the community choice aggregator shall notify the applicable
38 electrical corporation that community choice service will
39 commence within 30 days.

1 (19) Once notified of a community choice aggregator program,
2 the electrical corporation shall transfer all applicable accounts to
3 the new supplier within a 30-day period from the date of the close
4 of the electrical corporation's normally scheduled monthly
5 metering and billing process.

6 (20) An electrical corporation shall recover from the community
7 choice aggregator any costs reasonably attributable to the
8 community choice aggregator, as determined by the commission,
9 of implementing this section, including, but not limited to, all
10 business and information system changes, except for
11 transaction-based costs as described in this paragraph. Any costs
12 not reasonably attributable to a community choice aggregator shall
13 be recovered from ratepayers, as determined by the commission.
14 All reasonable transaction-based costs of notices, billing, metering,
15 collections, and customer communications or other services
16 provided to an aggregator or its customers shall be recovered from
17 the aggregator or its customers on terms and at rates to be approved
18 by the commission.

19 (21) At the request and expense of any community choice
20 aggregator, an electrical corporation shall install, maintain, and
21 calibrate metering devices at mutually agreeable locations within
22 or adjacent to the community choice aggregator's political
23 boundaries. The electrical corporation shall read the metering
24 devices and provide the data collected to the community choice
25 aggregator at the aggregator's expense. To the extent that the
26 community choice aggregator requests a metering location that
27 would require alteration or modification of a circuit, the electrical
28 corporation shall only be required to alter or modify a circuit if
29 that alteration or modification does not compromise the safety,
30 reliability, or operational flexibility of the electrical corporation's
31 facilities. All costs incurred to modify circuits pursuant to this
32 paragraph, shall be borne by the community choice aggregator.

33 (d) (1) It is the intent of the Legislature that each retail end-use
34 customer that has purchased power from an electrical corporation
35 on or after February 1, 2001, should bear a fair share of the
36 Department of Water Resources' electricity purchase costs, as well
37 as electricity purchase contract obligations incurred as of the
38 effective date of the act adding this section, that are recoverable
39 from electrical corporation customers in commission-approved

1 rates. It is further the intent of the Legislature to prevent any
2 shifting of recoverable costs between customers.

3 (2) The Legislature finds and declares that this subdivision is
4 consistent with the requirements of Division 27 (commencing with
5 Section 80000) of the Water Code and Section 360.5 of this code,
6 and is therefore declaratory of existing law.

7 (e) A retail end-use customer that purchases electricity from a
8 community choice aggregator pursuant to this section shall pay
9 both of the following:

10 (1) A charge equivalent to the charges that would otherwise be
11 imposed on the customer by the commission to recover
12 bond-related costs pursuant to any agreement between the
13 commission and the Department of Water Resources pursuant to
14 Section 80110 of the Water Code, which charge shall be payable
15 until any obligations of the Department of Water Resources
16 pursuant to Division 27 (commencing with Section 80000) of the
17 Water Code are fully paid or otherwise discharged.

18 (2) Any additional costs of the Department of Water Resources,
19 equal to the customer's proportionate share of the Department of
20 Water Resources' estimated net unavoidable electricity purchase
21 contract costs as determined by the commission, for the period
22 commencing with the customer's purchases of electricity from the
23 community choice aggregator, through the expiration of all then
24 existing electricity purchase contracts entered into by the
25 Department of Water Resources.

26 (f) A retail end-use customer purchasing electricity from a
27 community choice aggregator pursuant to this section shall
28 reimburse the electrical corporation that previously served the
29 customer for all of the following:

30 (1) The electrical corporation's unrecovered past
31 undercollections for electricity purchases, including any financing
32 costs, attributable to that customer, that the commission lawfully
33 determines may be recovered in rates.

34 (2) Any additional costs of the electrical corporation recoverable
35 in commission-approved rates, equal to the share of the electrical
36 corporation's estimated net unavoidable electricity purchase
37 contract costs attributable to the customer, as determined by the
38 commission, for the period commencing with the customer's
39 purchases of electricity from the community choice aggregator,

1 through the expiration of all then existing electricity purchase
2 contracts entered into by the electrical corporation.

3 (g) Estimated net unavoidable electricity costs paid by the
4 customers of a community choice aggregator shall be reduced by
5 the value of any benefits that remain with bundled service
6 customers, unless the customers of the community choice
7 aggregator are allocated a fair and equitable share of those benefits.

8 (h) (1) Any charges imposed pursuant to subdivision (e) shall
9 be the property of the Department of Water Resources. Any charges
10 imposed pursuant to subdivision (f) shall be the property of the
11 electrical corporation. The commission shall establish mechanisms,
12 including agreements with, or orders with respect to, electrical
13 corporations necessary to ensure that charges payable pursuant to
14 this section shall be promptly remitted to the party entitled to
15 payment.

16 (2) Charges imposed pursuant to subdivisions (d), (e), and (f)
17 shall be nonbypassable.

18 (i) The commission shall authorize community choice
19 aggregation only if the commission imposes a cost-recovery
20 mechanism pursuant to subdivisions (d), (e), (f), and (h). Except
21 as provided by this subdivision, this section shall not alter the
22 suspension by the commission of direct purchases of electricity
23 from alternate providers other than by community choice
24 aggregators, pursuant to Section 365.1.

25 (j) (1) The commission shall not authorize community choice
26 aggregation until it implements a cost-recovery mechanism,
27 consistent with subdivisions (d), (e), and (f), that is applicable to
28 customers that elected to purchase electricity from an alternate
29 provider between February 1, 2001, and January 1, 2003.

30 (2) The commission shall not authorize community choice
31 aggregation until it has adopted rules for implementing community
32 choice aggregation.

33 (k) (1) Except for nonbypassable charges imposed by the
34 commission pursuant to subdivisions (d), (e), (f), and (h), and
35 programs authorized by the commission to provide broader
36 statewide or regional benefits to all customers, electric service
37 customers of a community choice aggregator shall not be required
38 to pay nonbypassable charges for goods, services, or programs
39 that do not benefit either, or where applicable, both, the customer
40 and the community choice aggregator serving the customer.

1 (2) The commission, Energy Commission, electrical corporation,
2 or third-party administrator shall administer any program funded
3 through a nonbypassable charge on a nondiscriminatory basis so
4 that the electric service customers of a community choice
5 aggregator may participate in the program on an equal basis with
6 the customers of an electrical corporation.

7 (3) Nothing in this subdivision is intended to modify, or prohibit
8 the use of, charges funding programs for the benefit of low-income
9 customers.

10 (l) (1) An electrical corporation shall not terminate the services
11 of a community choice aggregator unless authorized by a vote of
12 the full commission. The commission shall ensure that prior to
13 authorizing a termination of service, that the community choice
14 aggregator has been provided adequate notice and a reasonable
15 opportunity to be heard regarding any electrical corporation
16 contentions in support of termination. If the contentions made by
17 the electrical corporation in favor of termination include factual
18 claims, the community choice aggregator shall be afforded an
19 opportunity to address those claims in an evidentiary hearing.

20 (2) Notwithstanding paragraph (1), if the Independent System
21 Operator has transferred the community choice aggregator's
22 scheduling coordination responsibilities to the incumbent electrical
23 corporation, an administrative law judge or assigned commissioner,
24 after providing the aggregator with notice and an opportunity to
25 respond, may suspend the aggregator's service to customers
26 pending a full vote of the commission.

27 (m) Any meeting of an entity authorized to be a community
28 choice aggregator, as defined in Section 331.1, for the purpose of
29 developing, implementing, or administering a program of
30 community choice aggregation shall be conducted in the manner
31 prescribed by the Ralph M. Brown Act (Chapter 9 (commencing
32 with Section 54950) of Part 1 of Division 2 of Title 5 of the
33 Government Code).

34 (n) Amendments to this section made by Assembly Bill 2145
35 of the 2013–14 Regular Session do not affect the enrollment status
36 of a customer already enrolled in a community choice aggregation
37 program prior to January 1, 2015.

38 SEC. 2. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O